Harun J.: This is an application under section 310 of the Criminal Procedure Code to determine that a Notice of Appeal was filed within the prescribed time or alternatively for extension of time within which to file the Notice of Appeal. The facts briefly are as follows:

The applicants were convicted and sentenced under the Petaling Jaya Town By-Laws, 1956 by the learned magistrate, Petaling Jaya on September 11, 1975. Being dissatisfied with the decision of the learned magistrate, the applicants filed a Notice of Appeal on September 22, 1975 at the said Magistrate's Court. On September 23, 1975, the learned magistrate by letter returned the Notice of Appeal to the applicants on the ground "that the notice is filed out of time"

Section 307(i) of the Criminal Procedure Code provides, *inter alia*, that a Notice of Appeal to the High Court must be lodged with the Magistrate's Court "within ten days from the time of ... judgment, sentence or order being passed or made." The questions are, (i) from which date does the 10 day period run and (ii) on which date is the last day for filing the Notice of Appeal. The learned magistrate says the period runs from September 11 and the last date was September 21. The applicants, on the other hand, say that the date runs from September 12 and the last date was September 22.

For purposes of computing time under any written law one has to look at the Interpretation Act, 1967 or the Interpretation & General Clauses Ordinance, 1948. The Criminal Procedure Code (F.M.S. Cap. 6) was revised under the Revision of Laws Act, 1968 and therefore by virtue of section 2(1)(b) of the Interpretation Act, 1967 the latter Act applies to the Criminal Procedure Code. Section 54 of the Interpretation Act reads:

"(1) In computing time for the purposes of any written law —

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b) if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day;"

It follows that in this case as the sentence was passed on September 11, that day is excluded and the period for the Notice of Appeal runs from September 12 — (section 54(1)(a)). As the tenth day falls on September 21 which is a Sunday and a weekly holiday in Petaling Jaya, the last day on which to file the Notice of Appeal is on Monday September 22 — (section 54(1(b)). I accordingly hold that the applicants have filed their Notice of Appeal within the prescribed time.

This application was not made until December 3, 1975, more than 10 weeks after the learned magistrate had rejected the Notice of Appeal. There is no explanation for the delay in the affidavit in support of this motion. Nonetheless, as the applicants were in the first instance in time in filing their Notice of Appeal and these proceedings were only necessitated because of the error of law by the learned magistrate in rejecting their Notice of Appeal, I would grant this application. In future, however, persons who are aggrieved by any order of a Subordinate Court should seek the aid of the High Court with all convenient speed as is appropriate in each case.

There will be an order that the Notice of Appeal filed by the applicants on September 22, 1975 in the Magistrate's Court, Petaling Jaya and returned to the applicants be now accepted by that court as having been filed in time.

Order accordingly.

Solicitors: *Lawrence Tan & S. Y. Chew.*

ONG SEE KE v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim Yeop A. Sani) March 2, 1976]
[Ipoh — Perak Criminal Appeal No. 96 of 1975]

Fisheries — Operating trawl net for fishing — Forfeiture of vessel — Fisheries (Maritime) (Amendment) Regulations, 1972, paragraph 2(i)(b) — Fisheries Act, 1963, ss. 15(1).

In this case the appellant was one of three accused who had pleaded guilty to the charge of operating a trawl net used with an engined boat of 120 horse power. The boat which belonged to the appellant was authorised for trawler fishing beyond 7 miles from the coast but the boat was found used for fishing in waters 5.2 miles off the coast. The appellant was fined $200 and the exhibits including the boat and net were forfeited. The appellant appealed against the order of forfeiture.

Held, dismissing the appeal; (1) it was clear that as far as trawl nets are concerned the use of engined boats was concomitant with their operation and therefore the boat was a "thing" used in the commission of the offence within the terms of paragraph (b) of section 15(1) of the Fisheries Act and was rightly forfeited;

(2) the fishing licence and boat licence were not however instruments or appliances and should not have been forfeited.

Cases referred to:-

(1) *Juk-De Sa* v. *Public Prosecutor* [1975] 1 M.L.J. 283.

(2) *Public Prosecutor* v. *Lee Chin Chai* [1974] 1 M.L.J. 205; [1974] 2 M.L.J. 174.

CRIMINAL APPEAL.

U. Harcharan Singh for the appellant.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the respondent.

Hashim Yeop A. Sani J.: The appellant was one of the three accused persons who pleaded guilty in the Magistrate's Court, Parit Buntar, on July 28, 1975 to a charge of operating trawl net used with an engined boat of 120 horse power and 16.5 tons No. PKFA 1601 in waters 5.2 miles off the coast of Kuala Kurau, Perak, in contravention of the provisions of paragraph 2(i)(b) of the Fifth Schedule to the Fisheries (Maritime) (Amendment) Regulations, 1972. The facts of the case which were admitted by all the accused were that on July 8, 1974 at about 2.30 p.m. a marine police crew while patrolling the maritime waters off Kuala Kurau saw a trawler and on board were the three accused who were then fishing with a trawl net. The marine corporal then took the bearing in order to determine the position of the boat from the nearest coast. As a result of the bearing taken it was found that the distance was 5.2 miles from the nearest coast. The marine corporal checked the licence of the fishing vessel. The licence (exhibit P2) disclosed that the boat was of type AEC 120 h.p. and of gross tonnage

16.5 tons. The licence also disclosed that the method of fishing authorised was "pukat tunda ikan" *i.e.* "trawler fishing." It was found that the accused had contravened condition No. 2 of the licence. At the back of the licence were set out the conditions among which was that the area for trawling authorised was beyond 7 miles from the coast of the State of Perak — (Condition No. 2). The vessel was towed back to Kuala Kurau together with the three accused persons and then a report was lodged vide Kuala Kurau Report No. 442/74. The fish and prawns found on board were auctioned by one Inspector Salim and the auction realised $70. The fishing licence (P1), the boat licence (P2), the trawl net (P3), 2 auto-boards (P4), 2 rolls of rope (P5), 2 triangles (butterfly) (P6) and proceeds from the auction (P7) were seized.

In their mitigation the accused only said that they were not aware of the distance from the coast. The appellant was fined $200 in default 6 months, and the other two accused persons, being the employees of the appellant, were fined $150 each in default one month. All the exhibits were forfeited.

The appellant who is the owner of the boat in question is appealing only against the order of forfeiture. There are three main grounds in the appeal, namely —

(1) that the learned magistrate erred in law in holding that he had no choice but to order forfeiture of the said exhibits;

(2) that the learned magistrate erred in law in basing his order for forfeiture on section 15(1)(b) of the Fisheries Act 1963 without first considering whether section 15(1)(a) of the said Act was applicable; and

(3) that the learned magistrate misconstrued *Juk De Sa* v. *Public Prosecutor*.[1]

Since section 15 of the Fisheries Act, 1963 deals with the powers of forfeiture the first and second grounds of the appeal can be dealt with together.

The first limb of section 15(1) requires that an order for the forfeiture *or* for the release of anything liable to forfeiture under the Act shall be made by the court before which the prosecution with regard thereto has been held. The second limb of that subsection requires that an order for forfeiture *shall* be made if it is proved to the satisfaction of the court that either paragraphs (a)(i) and (b) *or* paragraphs (a)(ii) and (b) have been complied with. In this case it is the second limb of section 15(1) that applies and apparently this explains why the learned magistrate in his grounds felt it safe to conclude that he had "no choice but to order forfeiture" of the exhibits — (page 4 of the grounds of judgment). At the end of his grounds the learned magistrate however said that the forfeiture is based on section 15(1)(b) of the Act. It is clear of course that for the second limb of section 15(1) to apply the court must be satisfied that the offence committed is for using any net, instrument, fishing material or appliance which is "prohibited by or under this Act or any regulations or rules made thereunder" or the offence committed is for doing or carrying on an act without a licence or permit and that if either one of these two requirements is fulfilled the court must also be satisfied that the "thing" was the "subject matter of or was used in the commission of the offence" notwithstanding that no person may have been convicted of the offence.

It is clear from the facts of this case which were admitted by the appellant and the other two accused persons that they were trawling within seven miles off the coast of Kuala Kurau which is prohibited by condition No. 2 of the licence. It is the contention of the counsel for the appellant that since a licence was in force in respect of the trawl net then the use of the net cannot be said to be "prohibited." This argument has no merit. It is to be noted that the licence issued was subject to a number of conditions and one of these conditions is that the area for the operation of the trawl net authorised is the area beyond 7 miles from the coast of the State of Perak. In other words the licence is valid only for trawl fishing outside the 7 miles off the coast but not within the 7 miles and using a trawl net within the 7 miles is therefore unauthorised or prohibited. Furthermore it is also clearly worded in section 13(1) of the Fisheries Act, 1963, which provides for the penalty for breach of provisions of the Act and regulations and rules thereunder where it states that any person who does any act contrary to, or *fails to comply with*, the provisions of this Act or any regulations or rules made thereunder shall be guilty of an offence. Regulation 4(6) of the Fisheries (Maritime) Regulations, 1967 as amended in 1970 (vide P.U.(A) 56/70) provides clearly that a contravention of any of the conditions of the licence shall be deemed to be an act contrary to the regulations and by virtue of section 13(1) of the Act an offence under the Act. In this case the statutory conditions attached are as in the Fifth Schedule (see regulation 4(4)). Now we come to the crux of the question. Counsel for the appellant contends that the learned magistrate has misconstrued *Juk De Sa* v. *Public Prosecutor, supra.* In fact the learned magistrate never discussed that case in his grounds of judgment but only referred to it as a note at the end of his ground following his reference to section 15(1)(b) of the Act. But as a matter of interest I would say that *Juk De Sa* v. *Public Prosecutor* is not on all fours with the instant case since the offence in that case as in the case of *Public Prosecutor* v. *Lee Chin Chai*[2] was under regulation 3 of the Fisheries (Amendment) Regulations, 1967. It is an offence under regulation 3 for a person to operate or permit or cause to be operated any fishing stakes or appliances unless there is in force in respect of such stakes or appliances a licence or permit. In *Juk De Sa* v. *Public Prosecutor* the accused pleaded guilty to operating a "pukat tunda" without a licence. The appeal was also against forfeiture of the vessel and *Public Prosecutor* v. *Lee Chin Chai, supra* was cited on behalf of the appellant for the contention that the words "the subject matter of an offence" should be construed so as not to include a vessel. *Public Prosecutor* v. *Lee Chin Chai* was however distinguished from that case by the argument that "pukat tunda" being an appliance which can only be operated with a vessel, *i.e.* it must be pulled by a vessel and therefore the vessel is an "inseparable" part of the use of the net and "indispensable" part of the latter's operation.

Looking at the wording of the Fifth Schedule itself it must be so, for paragraph 2(1) thereof clearly sets out what are the terms and conditions of the licence for otter trawl nets *used* with engined boats of prescribed tonnage and horse power. Again the wording of the new paragraph 2(2) in the 1974 amendment clearly states that all engined boats of less than 25 tons gross tonnage but with 60 horse power and above which were issued with a licence to operate trawl nets shall be deemed to be licensed in accordance with the provisions of this Schedule subject to the condition. To me it seems clear that at least as far as trawl nets are concerned the use of engined boats is concomitant with their operation and therefore the boat is a "thing" used in the commission of the offence within the terms of paragraph (b) of section 15(1) of the Act. The facts of the present care are also distinguishable in that when the appellant and the other two accused were found by the marine police they were in fact fishing with the trawl net.

Finally, counsel for the appellant referred to the horse power (120 h.p.) and tonnage (16.5 tons) of the vessel in question and stated that although the horse power is within paragraph 2(1)(b) of the Fifth Schedule (*i.e.* above 60 horse power but below 200 horse power) the tonnage being only 16.5 tons is therefore below 25 tons and as such paragraph 2(1)(b) of the Fifth Schedule does not apply. The offence in this case was committed on July 8, 1974 but the licence was issued on January 1, 1974. The Fisheries (Maritime) Regulations, 1967 were amended in 1972 vide P.U.(A) 395/72 and again amended in 1974 vide P.U.(A) 135/74. In the 1974 amendment a new sub-paragraph (2) of paragraph 2 of the Fifth Schedule was inserted which reads as follows: —

"(2) All engined boats of less than 25 tons gross tonnage but with 60 horse power and above which immediately before the commencement of this schedule were issued with a licence to operate trawl nets shall be deemed to be licensed in accordance with the provisions of this schedule subject to the condition that those boats with 60 horse power and above shall be used only in waters beyond 7 miles off the coast of any of the States of West Malaysia and of the islands aforesaid."

Since the whole Fifth Schedule were repealed and substituted by the new Fifth Schedule in the 1974 amendment it is clear that sub-paragraph (2) of paragraph 2 of the Schedule referred to above covers the licence of the appellant in this case.

Finally, coming to the exhibits forfeited it would seem from the records that the learned magistrate also ordered the forfeiture of the fishing licence and the boat licence concerned. Section 14(3) of the Act provides that all things liable to seizure shall be liable to forfeiture. But section 14(1) authorised only the seizure of vessels, vehicles, nets, instruments, fishing materials, appliances, fish or fishing stakes and does not include fishing licence or boat licence as they are neither instruments nor appliances.

On the foregoing grounds the appeal is dismissed but the order of forfeiture in respect of exhibits P1 and P2 shall be quashed.

Appeal dismissed.

Solicitors: *Yeoh Kian Teik & Co.*